

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TYLER JORDAN TORRES,
Plaintiff,
v.
SCOTT KERNAN, et al.,
Defendants.

Case No. [19-cv-00126-EMC](#)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Docket No. 28

I. INTRODUCTION

Tyler Jordan Torres, a California state parolee, filed this *pro se* civil rights action under 42 U.S.C. § 1983. Defendants K. Shuder and G. Garcia filed a motion to dismiss which is presently before the court.

II. BACKGROUND

Mr. Torres was incarcerated at CTF-Soledad at the time he filed his complaint. The complaint alleges that he received veterans' benefits that were deposited into his inmate trust account while he was imprisoned at CTF-Soledad. Defendant K. Shuder is an "accountant 1 specialist" and Defendant G. Garcia is an "accounting officer specialist" who work in the trust office at CTF-Soledad. Docket No. 1 at 3, 5. Mr. Torres alleges that Defendants Shuder and Garcia mismanaged his veterans' benefits by "failing to track and ensure that the funds are not placed against liens and hold; holds against future payments; and proper application of the Firt [sic] In – First Out (FIFO) method when processing transactions in and against his trust account." *Id.* at 5.

The complaint alleges the following: On June 20, 2017, the trust account received a

1 \$62.60 refund check for Mr. Torres from a quarterly package vendor. Mr. Torres alleges that
2 these returned funds originated from his veterans' benefits which he had used to purchase the
3 quarterly package, and therefore should have been treated as veterans' benefits when the refund
4 arrived. He alleges that the trust account officials inappropriately applied the refund to photocopy
5 and postage requests from June 10, 2017, when he did not have funds in his trust account.

6 In a separate event, Mr. Torres alleges that the trust account office improperly processed
7 money returned to the account that originally had been deposited as veterans' benefits. The trust
8 office processed a request from Mr. Torres to send money to J. Lorenzano on February 16, 2018.
9 *Id.* at 8. Torres sent J. Lorenzano \$150.00 on February 1, 2018. On March 11, 2018, he received
10 a deposit of \$140.00 from J. Lorenzano. Torres alleges that a "mistake was made," as the
11 explanation for why J. Lorenzano sent back the money. Torres alleges he was harmed because
12 after J. Lorenzano deposited the \$140 in Torres' account, prison officials deducted \$70 for a
13 restitution fine, \$7 for an administrative fee, and \$53 for various PLRA fees. Docket No. 1-1 at 5.
14 Mr. Torres contends that these fines and fees were unlawfully deducted from his account because
15 the \$140 was money that originally came from his veterans' benefits and was therefore exempt
16 from being used to cover court fines and fees. Defendant Shuder refused to correct the alleged
17 error. *Id.* at 8-9.

18 Mr. Torres further alleges that the trust account office manipulated his requests for postage
19 and copies, with the result that his veterans' benefits were improperly used to pay those charges.
20 He alleges that he made eight requests for postage and copies on June 10, 2017. The trust account
21 allegedly processed only one of those requests when he had a positive balance on June 15, 2017;
22 then held the other requests until the refund check arrived and created a positive balance against
23 which four more of the June 10, 2017, requests could be processed. K. Shuder then held the other
24 three requests for the next positive balance and processed those three requests on July 14, 2017
25 against Mr. Torres' July 2017 veterans' benefits payment. Mr. Torres alleges that all eight
26 requests should have been processed on June 15, 2017, creating liens and holds. Mr. Torres
27 contends that they should have processed the request even though he didn't have money in his
28 account to pay for the request, and in so doing officials would have created a lien or hold on his

1 account that could not have been paid for using his veterans' benefit money. *Id.* at 7-8. Mr.
2 Torres was "harmed" because they waited to process three of his June copying and postage
3 requests (totaling \$77.60) until his veterans' benefit for July had been deposited in his account,
4 and so he "lost" \$77.60 of that months' benefit to paying for the requests that he made back in
5 June when he didn't have money in his account. He would have preferred that prison officials
6 process all the requests together in June when he didn't have money in his account, because that
7 would have created a lien or hold on his account, and veterans' benefits cannot be used to pay off
8 liens and holds.

9 The Court conducted an initial review of the complaint as required by 28 U.S.C. § 1915A,
10 and determined that the complaint stated a cognizable claim. The Court wrote: "In brief research,
11 the Court was unable to find a clear answer in favor or against Mr. Torres' contention that the
12 protections of 38 U.S.C. § 5301 apply to inmate trust account deposits that are refunds/returns of
13 funds that originated as veterans' benefits. The Court thus refused to dismiss this case at the
14 screening stage under 28 U.S.C. § 1915A.

15 Giving the *pro se* complaint the liberal construction to which it is entitled, the Court held
16 that the allegations appear to state a cognizable claim against Defendants Shuder and Garcia for a
17 violation of 38 U.S.C. § 5301 by causing Mr. Torres' veterans' benefits to be applied incorrectly."
18 Docket No. 15 at 3.

19 Defendants Shuder and Garcia now move to dismiss the complaint under Federal Rule of
20 Civil Procedure 12(b)(6) on the grounds that (a) the complaint fails to state a claim upon which
21 relief may be granted and (b) they are entitled to qualified immunity. Mr. Torres opposes the
22 motion to dismiss.

23 III. DISCUSSION

24 A. Motion to Dismiss

25 1. Rule 12(b)(6) Standards

26 Federal Rule of Civil Procedure 12(b)(6) permits a defendant to move to dismiss on the
27 ground that there is a "failure to state a claim upon which relief can be granted." A motion to
28 dismiss should be granted if the plaintiff fails to proffer "enough facts to state a claim to relief that

1 is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (abrogating
2 *Conley v. Gibson*, 355 U.S. 41 (1957)). The Court “must accept as true all of the factual
3 allegations contained in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and must
4 construe *pro se* pleadings liberally, *Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010).
5 However, the Court need not accept as true allegations that are legal conclusions, unwarranted
6 deductions of fact or unreasonable inferences. *See Sprewell v. Golden State Warriors*, 266 F.3d
7 979, 988, *amended*, 275 F.3d 1187 (9th Cir. 2001).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
9 right secured by the Constitution or laws of the United States was violated and (2) that the
10 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487
11 U.S. 42, 48 (1988).

12 As a general rule, the court may not consider materials beyond the pleadings when ruling
13 on a Rule 12(b)(6) motion. *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). However, the
14 court may consider documents attached to the complaint without converting the motion to dismiss
15 into a motion for summary judgment. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

16 If the court dismisses the complaint, it must then decide whether to grant leave to amend.
17 A district court should grant leave to amend unless it determines that the pleading could not
18 possibly be cured by the allegation of other facts. *See Lopez v. Smith*, 203 F.3d 1122, 1130 (9th
19 Cir. 2000).

20 2. Qualified Immunity Standards

21 The defense of qualified immunity protects “government officials . . . from liability for
22 civil damages insofar as their conduct does not violate clearly established statutory or
23 constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457
24 U.S. 800, 818 (1982). The doctrine of qualified immunity attempts to balance two important and
25 sometimes competing interests: “the need to hold public officials accountable when they exercise
26 power irresponsibly and the need to shield officials from harassment, distraction, and liability
27 when they perform their duties reasonably.” *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The
28 doctrine thus intends to take into account the real-world demands on officials in order to allow

1 them to act “swiftly and firmly” in situations where the rules governing their actions are often
2 “voluminous, ambiguous, and contradictory.” *Mueller v. Aufer*, 576 F.3d 979, 993 (9th Cir. 2009)
3 (citation omitted).

4 The rule of “qualified immunity protects ‘all but the plainly incompetent or those who
5 knowingly violate the law.’” *Saucier v. Katz*, 533 U.S. 194, 202 (2001) (quoting *Malley v. Briggs*,
6 475 U.S. 335, 341 (1986)). Defendants can have a reasonable, but mistaken, belief about the facts
7 or about what the law requires in any given situation. *Id.* at 205. A court considering a claim of
8 qualified immunity must determine whether the plaintiff has alleged the deprivation of an actual
9 constitutional right and whether such right was clearly established, such that it would be clear to a
10 reasonable officer that his conduct was unlawful in the situation he confronted. *See Pearson*, 555
11 U.S. at 232-236 (overruling the sequence of the two-part test set forth in *Saucier*, which required
12 determining a deprivation first and then deciding whether such right was clearly established). The
13 court may exercise its discretion in deciding which prong to address first, in light of the particular
14 circumstances of each case. *Id.* At 236.

15 “An officer cannot be said to have violated a clearly established right unless the right’s
16 contours were sufficiently definite that any reasonable official in [his] shoes would have
17 understood that he was violating it, meaning that existing precedent . . . placed the statutory or
18 constitutional question beyond debate.” *City and County of San Francisco, Cal. v. Sheehan*, 135
19 S. Ct. 1765, 1774 (2015) (alteration and omission in original; citation omitted); *see, e.g., Carroll v.*
20 *Carman*, 574 U.S. 13, 16 (2014) (citations omitted) (law not clearly established whether officer
21 may conduct a ‘knock and talk’ at any entrance to a home that is open to visitors, rather than only
22 the front door); *Hines v. Youseff*, 914 F.3d 1218, 1229 (9th Cir. 2019) (defendants entitled to
23 qualified immunity where “the specific right that the inmates claim in these cases—the right to be
24 free from heightened exposure to Valley Fever spores—was not clearly established at the time”);
25 *Horton v. City of Santa Maria*, 915 F.3d 592, 600-01 (9th Cir. 2019) (officer entitled to qualified
26 immunity on failure-to-protect claim from pretrial detainee who attempted to hang himself
27 because there was conflicting information as to whether he was suicidal and the case law “was
28 simply too sparse, and involved circumstances too distinct from those in this case, to establish that

1 a reasonable officer would perceive a substantial risk that [detainee] would imminently attempt
2 suicide”).

3 3. 38 U.S.C. § 5301

4 38 U.S.C. § 5301(a) states that: “Payments of benefits due or to become due under any law
5 administered by the Secretary [of Veterans Affairs] shall not be assignable except to the extent
6 specifically authorized by law, and such payments made to, or on account of, a beneficiary shall
7 be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to
8 attachment, levy, or seizure by or under any legal or equitable process whatever, either before or
9 after receipt by the beneficiary.” *Id.* An action under § 1983 may be brought for a violation of 38
10 U.S.C. § 5301. *See Higgins v. Beyer*, 293 F.3d 683, 689-90 (3d Cir. 2002).

11 In its screening order, the Court noted that after brief research it could find no case law
12 either in support of, or against, Mr. Torres’ position that defendants violated § 5301. Further
13 research has revealed a dearth of case law interpreting this statute. Defendants claim they are
14 entitled to qualified immunity because no reasonable trust account officer would have known that
15 they were violating § 5301 by using money refunded by third parties to cover holds or by waiting
16 to process postage and copy requests until funds were available. The Court agrees. Even if the
17 allegations of the complaint are sufficient to state a claim for violation of § 5301, defendants are
18 entitled to qualified immunity because of the lack of clearly established law.

19 In *Nelson v. Heiss*, 271 F.3d 891, 894-96 (9th Cir. 2001), the Ninth Circuit reviewed an
20 inmate’s claim that California Department of Corrections and Rehabilitation (CDCR) officials
21 violated § 5301 by using his veterans’ benefits to pay for what were essentially overdrafts to his
22 prison trust account. The Ninth Circuit noted that § 5301(a) had not been construed previously,
23 and held that under this provision, prison officials could not use an inmate’s veterans’ benefits to
24 pay off holds placed on his trust account. Use of veterans’ benefits to pay for overdrafts to an
25 inmate’s trust account was prohibited even if the inmate had originally authorized the charges,
26 because it amounted to the assignment of benefits. However, the court noted that § 5301 did not
27 preclude the inmate himself from directing that payments be deducted from funds which existed in
28 his account at the time that he issued the direction. *Id.*

1 *Nelson* also discussed *Lawrence v. Shaw*, 300 U.S. 245 (1937), a case in which the
2 Supreme Court held that a state could not tax a bank account which held veterans' benefits. In
3 that case the Supreme Court held that under the World War Veterans' Act (38 U.S.C. § 454)
4 veterans' benefits deposited in a bank could not be subject to property taxes. The Court concluded
5 that,

6 We hold that immunity from taxation does attach to bank credits of
7 the veteran or his guardian which do not represent or flow from his
8 investments but result from the deposit of the warrants or checks
9 received from the government when such deposits are made in the
10 ordinary manner so that the proceeds of the collection are subject to
 draft upon demand for the veteran's use. In order to carry out the
 intent of the statute, the avails of the government warrants or checks
 must be deemed exempt until they are expended or invested.

11 *Id.* at 250-51.

12 Defendants claim that they are entitled to qualified immunity because even assuming the
13 allegations of the complaint are true, reasonable officials in defendants' position would not have
14 known that their conduct violated clearly established law. Defendants contend that under *Shaw*,
15 § 5301 does not apply to veterans' benefits once the benefit money is expended or invested.
16 Accordingly, it was not clearly established that after Mr. Torres expended his veterans' benefits on
17 purchases from the quarterly package vender and sending money to J. Lorenzano, the refunds he
18 later received would be considered veteran's benefits and maintain their exempt status.

19 Mr. Torres asserts that he did not "expend" the funds, rather, he "attempted to expend" the
20 funds, and therefore they were still exempt veterans' benefits. This argument, however, does not
21 overcome the lack of clearly established law. *Nelson* and *Shaw* discuss how veterans' benefits are
22 to be handled as they come into the prisoner's account, but neither case addressed Mr. Torres'
23 particular facts where veterans' benefits were sent to third parties, and a third-party later sent
24 money back to the prisoner; it is unclear whether those returned funds continue to be veterans'
25 benefits immune from assignment. Neither *Lawrence* nor *Nelson* suggests that it was "beyond
26 debate" that defendants' conduct violated § 5301. See *Sheehan*, 135 S. Ct. 1765.

27 Likewise, defendants are entitled to qualified immunity concerning Mr. Torres' allegations
28 that they improperly used his July 2017 veterans' benefits. There were no funds available in Mr.

1 Torres's account when he made his original postage and copying requests in June, therefore
2 defendants waited to process the requests until funds became available. The last three requests
3 were processed in July once Mr. Torres' July veterans' benefit had been deposited, and defendants
4 used \$77.60 from the benefit money to pay for the three delayed requests.

5 *Nelson* states that although § 5301(a), "precludes the Prison Officials from placing holds
6 on [plaintiff's] account . . . this does not preclude [plaintiff] from directing that payments be
7 deducted from funds which exist in his account at the time he issues the direction. Nothing we
8 says here precludes him from currently spending the benefits he has received." 271 F.3d at 896.
9 Mr. Torres was free to make copying and postage requests that could be paid for by his veterans'
10 benefits if the benefit money was in his account. However, it cannot be said that it was clearly
11 established that defendants were not free to delay his requests and then process them at such future
12 time as benefits were in his account and available for use. *Nelson* addressed a situation in which
13 prison officials processed the inmate's requests despite lack of funds in the account, creating a
14 hold. It does not clearly address delayed processing of inmate requests such as Torres alleges in
15 his complaint; Mr. Torres has not pointed to any other case law on this issue.

16 In sum, even assuming all the allegations of the complaint are true, defendants are entitled
17 to qualified immunity because it was not clearly established that their actions violated § 5301.
18 Accordingly, defendants are granted qualified immunity.

19 4. Violation of the CDCR Financial Information Memo

20 In his complaint Mr. Torres alleged that defendants violated the guidelines of the CDCR
21 Financial Information Memo ("FIM") by not applying the "first in first out" rule, when they
22 waited to process his postage requests until there were funds in his account to cover the requests.
23 He also alleges that defendants failed to trace his veterans' benefits as required by the FIM.
24 Defendants assert that violation of the FIM does not give rise to a claim under § 1983, as no
25 violation of federal law is stated. In his opposition to defendants' Rule 12(b)(6) motion to
26 dismiss, Mr. Torres contends that violation of the CDCR FIM was a violation of his Fourth
27 Amendment rights because defendants wrongly seized money from his trust account. Docket No.
28 29 at 5.

The allegations that defendants violated the CDCR’s FIM does not support a claim under § 1983 because the failure of state prison officials to follow state prison regulations does not rise to the level of a constitutional violation. *See Galen v. City of Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007) (“Section 1983 requires [plaintiff] to demonstrate a violation of federal law, not state law”). Further, a prisoner is not protected by the Fourth Amendment against the seizure, destruction or conversion of his property. *See Taylor v. Knapp*, 871 F.2d 803, 806 (9th Cir. 1989). Likewise, even if the allegations are construed as a due process claim, neither the negligent nor intentional deprivation of property states a due process claim under § 1983 if the deprivation was random and unauthorized. *See Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981) (no due process violation where state employee negligently lost prisoner’s hobby kit), *overruled in part on other grounds, Daniels v. Williams*, 474 U.S. 327, 330-31 (1986)¹; *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (unauthorized intentional destruction of inmate’s property not a due process violation where the state provides an adequate post-deprivation remedy). The availability of an adequate state post-deprivation remedy precludes relief because it provides sufficient procedural due process. *See Zinermon v. Burch*, 494 U.S. 113, 128 (1990). California law provides such an adequate post-deprivation remedy. *See Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal. Gov’t Code §§ 810-895). Thus, although Mr. Torres may be able to bring a state law claim against defendants for violating the CDCR FIM, the allegations of the complaint do not state a cognizable claim for relief under § 1983.

To the extent Mr. Torres is attempting to bring a state law claim for violation of the CDCR FIM, this Court declines to exercise supplemental jurisdiction over the state law claim under 28 U.S.C. § 1376. As explained in this order, Mr. Torres’ federal claim for violation of § 5301 is dismissed because defendants are entitled to qualified immunity. Although the Court has discretion under § 1367(c)(3) to adjudicate or to dismiss the remaining state law claims, *Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001), after dismissal of all federal claims, it refuses to do so

¹ The Court in *Daniels* concluded that the Due Process clause of the Fourteenth Amendment was not implicated by a negligent act of an official, overruling *Parratt* “to the extent it states that mere lack of due care by a state official may “deprive” and individual of life, liberty, or property under the Fourteenth Amendment.” *Id.* at 330-31.

1 here. The Court dismisses the state law claim. Mr. Torres may pursue any state law claim in state
2 court.

3 5. Injunctive Relief

4 In addition to damages, Mr. Torres requests injunctive relief in the form of an audit of his
5 trust account and creation of a separate inmate trust account to hold veterans' benefits. Where
6 injunctive relief is involved, mootness must be determined in light of the current circumstances.
7 *See Mitchell v. Dupnik*, 75 F.3d 517, 528 (9th Cir. 1996). Because Mr. Torres was released from
8 prison during the pendency of this action, his request for injunctive relief is moot and must be
9 dismissed. *See Dilley v. Gunn*, 64 F.3d 1365, 1368-69 (9th Cir. 1995) (when an inmate is released
10 from prison and there is no reasonable expectation nor demonstrated probability that he will again
11 be subjected to the prison conditions from which he seeks injunctive relief, a claim for injunctive
12 relief should be dismissed as moot).


13 IV. CONCLUSION

14 For the reasons set forth above, Defendants' motion to dismiss is **GRANTED**. The
15 complaint is dismissed. The dismissal is without prejudice to Mr. Torres filing an action in state
16 court to pursue any state law claims he may have.

17 This order disposes of Docket No. 28.

18
19 **IT IS SO ORDERED.**

20
21 Dated: April 13, 2020

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23 _____
24 EDWARD M. CHEN
25 United States District Judge
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